



Appeal Decision

Site visit made on 8 June 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2020

Appeal Ref: APP/K1128/W/20/3245718

Moonraker, The Keep Gardens, Dartmouth TQ6 9JA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Mike Griffiths against the decision of South Hams District Council.
 - The application Ref 2731/19/VAR, dated 15 August 2019, was refused by notice dated 30 October 2019.
 - The application sought planning permission for the erection of a dwelling with associated landscaping without complying with a condition attached to planning permission Ref 2191/18/FUL, dated 12 September 2018.
 - The condition in dispute is No 2 which states that: the development hereby approved shall in all respects accord strictly with drawing numbers 23(A), 27(A), 20(B) received by the Local Planning Authority on 09/07/2018 and plan 25(b) received by the Local Planning Authority on 30/08/2018.
 - The reason given for the condition is: to ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a dwelling with associated landscaping at Moonraker, The Keep Gardens, Dartmouth TQ6 9JA in accordance with the application Ref 2731/19/VAR dated 15 August 2019, without compliance with condition number No 2 previously imposed on planning permission Ref 2191/18/FUL dated 12 September 2018 and subject to the following conditions set out in the attached schedule.

Procedural Matters

2. Planning permission has been granted under reference 2191/18/FUL for a dwelling on land to the rear of Moonraker. I noted at my site visit that works are well advanced on the construction of the property. The approved scheme included a vehicular access past the original property, which also serves that dwelling, to a parking and turning area. This proposal seeks to vary the approved plans to include an extension to the vehicular driveway which would lead to a new garage towards the corner of the site.
3. The proposal was refused for two reasons. Further details have been submitted in relation to drainage and the Council has confirmed that they are satisfied that this addresses the second reason for refusal, subject to a condition attached to any approval. I have found no reason to disagree on this issue.

Main Issues

4. The first reason for refusal identifies that the access and its associated use would cause harm to the amenities of the neighbour. The reason does not reference that the garage building itself would cause harm. Based on my site visit, the details of the garage, including the siting towards the corner of the site, the sedum roof and the level in relation to the adjoining property, Angelwood, I am satisfied that the garage building itself and its related use, would not cause harm to the living conditions of the occupiers of the adjoining dwelling.
5. In the light of the above, the main issue is whether the use of the extended driveway would cause harm to the living conditions of the occupiers of Angelwood, with particular regard to potential noise, vibration and light disturbance.

Reasons

6. The approved driveway to access the new dwelling would be located alongside part of the boundary with Angelwood and would slope down into the site. There would be a parking and turning area in the general vicinity of Angelwood and because of the level change vehicles using the parking and turning area would be set down on a lower level than the adjoining property. A retaining wall with fence above separates the two properties in this area. These circumstances would significantly reduce the impact of vehicle movements on the living conditions of the occupiers of Angelwood.
7. The proposal would extend the driveway to the new garage and this area of driveway would be closer to the outside decking areas used as amenity space for the occupiers of Angelwood. Because of the angle of Angelwood in its site habitable rooms would be in general proximity and face towards the extended driveway area. I have carefully considered the objections to the proposal, including those from the occupier of Angelwood.
8. The circumstances of the site are such that vehicles would be likely to be moving slowly when using the extended driveway, thereby limiting noise and vibration. The enlarged parking and turning area may assist drivers turning within the site and thereby, in all likelihood, would not increase any disturbance from vehicles in this respect. The glow and beam from vehicle headlights would be minimised by the lower level of the driveway and the boundary screening from Angelwood. I consider that the use of the extended driveway would, in all likelihood, make little material difference to the general situation which has already been approved because vehicle and turning activity would already be in the vicinity of the neighbouring dwelling.
9. Taking all these matters together, I am satisfied that the use of the driveway in conjunction with the modest extension to the driveway would not cause undue harm to the living conditions of the occupiers of Angelwood because of, in particular, the lower level of the driveway, the boundary screening and that the vehicle movements and related activity would be associated with a single dwelling that has already been approved.
10. The opportunities for landscaping would be reduced by the proposal. However, given the general built-up nature of the area and the location of this site back

from the road, I do not consider that this could form a reason for rejecting the scheme in this case.

11. In the light of the above analysis, I conclude that the living conditions of the adjoining occupiers would not be unduly harmed by the use of the driveway including the extended section, with particular regard to any noise, vibration and light disturbance. Consequently, the proposal would comply with Policy DEV1 of the Plymouth and South West Devon Joint Local Plan 2014-2034 which seeks, amongst other things, to ensure that development protects health and amenity for both new and existing residents.

Other Matters

12. I understand that a previous application for a dwelling also sought a garage towards the corner of the site which would have included an extension to the driveway. This application was refused. It is argued that this proposal seeks to reinstate the scheme. However, I have taken all the submissions into account and carefully considered the relationship of the proposal to the adjoining property at my site visit and, for the reasons explained above, I have found the proposal would be acceptable.

Conditions

13. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the previous planning permission, unless they have already been discharged. The Council has recommended conditions in the event that I was minded to allow the appeal and the appellant has had the opportunity to make representations on them at the final comments stage.
14. I have reviewed the recommended conditions having regard to the tests set out in the National Planning Policy Framework and I have made minor modifications to the recommended conditions in the interests of accuracy and clarity. As I have little information before me about the status of all the other conditions imposed on the previous planning permission, I shall impose all those that I consider to be relevant. In the event that some have in fact been discharged, that is a matter that can be addressed by the parties.
15. Conditions covering the statutory time limit and the list of the approved plans are necessary in the interests of certainty. Conditions to ensure that the windows in the north-west elevation are obscure glazed and that further windows cannot be inserted are necessary in the interests of protecting the amenities of the occupiers of the adjoining property.
16. Although the dwelling is nearing completion, I have limited information as to whether the external materials have been approved. Such a condition is recommended by the Council and therefore I consider that a condition requiring approval of the external materials is necessary in the interests of the character and appearance of the area. As the dwelling works are advanced I have amended the condition so that it requires the submission of the external materials prior to the first occupation of the development rather than installation.
17. A condition to address any contaminated land that may be found during the construction process is necessary in the interests of protecting the living conditions of future occupants of the development. Conditions to ensure that

surface and foul water drainage is addressed in accordance with approved details are necessary in the interests of pollution control and to prevent flooding.

18. The Council has recommended a condition which would remove permitted development rights for a wide range of types of development within the curtilage. The site is reasonably modest in extent, with the development fairly close to the boundaries which have properties on all sides. Exceptionally therefore I consider that it is necessary to remove rights to add extensions, porches, roof alterations and outbuildings. I am not satisfied that the evidence demonstrates it is reasonable to remove rights in respect of the other classes detailed and I have amended the condition accordingly.
19. A landscaping scheme is necessary in the interests of the character and appearance of the area. I have amended the recommended condition so that it relates to the first occupation rather than above ground building works as drafted. A condition is necessary in the interests of ecology for the works to take place in accordance with the recommendations in the ecological report.

Conclusion

20. Having regard to the above, and subject to the recommended conditions, I conclude that the appeal should be allowed.

David Wyborn

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, 3615 20 Rev C, 3615 21, 3615 23 Rev B, 3615 25 Rev C and 3615 27 Rev C.
- 3) No additional windows or openings shall be inserted into the north-west elevation.
- 4) Notwithstanding the approved plans, all windows and openings within the north-west elevation shall be obscure glazed and retained permanently as such.
- 5) Prior to the first occupation of the development, details/samples of facing materials, and of roofing materials to be used in the construction of the proposed development shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with those samples as approved.
- 6) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with. Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority.
- 7) Prior to first occupation of the development, the drainage scheme shall be installed in strict accordance with the approved plans (a crate soakaway should be installed as per revised calculations submitted on 26th March 2020 and permeable paving should be installed in line with CIRIA C753), maintained and retained in accordance with the agreed details for the life of the development. If any other drainage scheme than that approved as part of this permission is proposed then a mitigating drainage alternative shall be submitted to and agreed in writing by the Local Planning Authority and thereafter that alternative drainage scheme shall be installed, maintained and retained.
- 8) Prior to the installation of any part of the foul water drainage scheme written permission from South West Water or details of a package treatment plant shall have been submitted to and approved in writing by the Local Planning Authority. Once approved the works shall take place in accordance with the approved scheme.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no

extensions, porches, roof alterations, or outbuildings shall be erected other than those expressly authorised by this permission.

- 10) The development hereby permitted shall not be occupied until a landscaping scheme has been submitted to and approved by the Local Planning Authority, including indicating the boundary treatment of the proposed plots/development. The scheme submitted shall be fully implemented in the planting season following the completion of the development and the plants shall be protected, maintained and replaced as necessary for a minimum period of five years following the date of the completion of the planting.
- 11) The recommendations, mitigation and enhancement measures of the Ecological Report, by Ruth Cooper on 7th December 2017, shall be fully implemented prior to the commencement of the use hereby approved and adhered to at all times.