



Appeal Decision

Site visit made on 13 August 2020

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th October 2020

Appeal Ref: APP/U1105/W/20/3252871

Land to the south east of Pembroke House, Beer Road, Seaton EX12 2PT

- 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 Duncan Rawlings against the decision of East Devon District Council.
 - The application Ref 19/2188/FUL, dated 3 October 2019, was refused by notice dated 20 December 2019.
 - The development proposed is described as "Erection of 1 no. dwelling to the southeast of Pembroke House within built up area boundary".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant submitted an amended arboricultural impact assessment and tree protection plan (the 'TPP') part way through the determination of the planning application. The documents were accepted by the Council. For the avoidance of doubt, I have determined this appeal on the basis of the amended documents.
3. The appellant has submitted an amended site plan and an accompanying swept path analysis as part of the appeal. The amendment would alter the proposed parking layout and change the red line site boundary of the appeal site. The amended site plan was submitted to the Council before the planning application was determined. However, it was not accepted by the Council and it is not listed as part of the refused plans on the Council's decision notice. The appeal process should not be used to evolve a scheme and it is important that I determine this appeal on the basis of what was considered by the local planning authority, and on which interested people's views were sought. Therefore, I have not had regard to the amended plan or the swept path analysis as part of the determination of this appeal.
4. As part of the appeal, the appellant has submitted several computer-generated images of the proposed development and an additional section drawing, which shows the topography and height of the existing trees compared to that of the proposed dwelling. As the submitted documents do not evolve the scheme, and the nature of the concerns of those who would normally have been consulted are clear from consultation on the original set of plans, I do not consider that their interests would be prejudiced if I determine the appeal in accordance with these documents.

Main Issues

5. The main issues are: (i) the effect of the proposal on trees the subject of a Tree Preservation Order; (ii) whether or not the proposal would function effectively having regard to the provision of on-site parking; and (iii) whether the proposal adheres to the Council's strategy to provide accessible and adaptable dwellings, in the context of adopted policy.

Reasons

Site and proposal

6. The appeal site forms part of the garden of Pembroke House, which is an existing flattened development that is situated within spacious grounds. The land slopes downwards from Beer Road to the appeal site.
7. It is proposed to erect a two-storey detached dwelling at the appeal site. The property would be served by a pedestrian footpath from an existing on-site parking and turning area, which is located near to Beer Road.

Trees

8. Immediately to the south of the appeal site there is an extensive group of trees which are protected by a Tree Preservation Order (TPO). In addition, there are several mature trees along the eastern boundary of the appeal site. Collectively, the trees contribute positively to the area's verdant character and are an important landscape feature when viewed from the wider public realm.
9. It is unclear whether the trees along the eastern boundary are the subject of a TPO. However, for the reasons set out below, this is not a determinative point on which this appeal turns.
10. Based on the evidence before me, I am satisfied that the proposed development could be constructed without causing harm to the group of protected trees to the south of the site and the existing trees along the eastern boundary of the appeal site.
11. However, given the proximity of the proposed dwelling in relation to the group of protected trees to the south of the appeal site, it is likely that the group of trees would have a dominating effect on the rear garden and rear elevation of the proposed dwelling, which would include extensive rear facing fenestration and a upper ground floor terrace area. This dominating effect could lead to concerns about overshadowing and poor outlook from future occupiers of the proposed dwelling. Indeed, the appellant's TPP shows that the footprint of the proposed dwelling would be located within the shadow arc of several of the protected trees located to the south of the appeal site.
12. This would be an unacceptable consequence arising from the relationship between the proposed dwelling and the existing group of protected trees, which could result in pressure to fell the trees or reduce the dominance of the tree canopy. Such works would cause significant harm to the verdant character of the local area.
13. The appellant argues that the outlook from the proposed dwelling would be 'above the existing tree line' and that future occupiers of the property would have a 'triple aspect' with windows facing north, south and east. Whilst this may be the case from the upper ground floor of the proposed dwelling, the

bedrooms and snug, which would be located at the lower ground floor level, would have a single aspect that would overlook the protected trees. Moreover, due to the topography of the appeal site, the proposed rear garden area would be situated at a lower level than that of the lower ground floor of the proposed dwelling, which would further increase the dominating effect of the protected trees.

14. Further to the above, the Council's tree officer explains that many of the trees within the protected group are 'young to middle aged' with the potential for future growth. If future growth of the trees was to occur, it would further exacerbate the dominating effect, which would likely increase the pressure on the Council for the protected trees to be felled or reduced.
15. The main parties explain that there have been several planning applications at the appeal site, which have sought planning permission for residential development. Prior to the current proposal, planning permission was sought for two dwellings within the grounds of Pembroke House. The application was refused by the Council and dismissed at appeal¹. I recognise that the previous Inspector did not raise any concerns about the effect of the proposed development on the group of trees to the south of the appeal site. However, the appeal decision from August 2018 predates the confirmation of the TPO² by the Council. Moreover, the dwelling shown at plot 2 on the refused plans was sited in different position when compared to that of the current proposal. For these reasons, the previous application is materially different to the current proposal. As such, I have afforded the previous decision limited weight.
16. The appellant explains that the group of protected trees are located on land outside of the appeal site. Whilst this may be the case, this does not overcome or outweigh my concerns.
17. For the reasons set out above, I conclude that the proposal would be harmful to trees the subject of a Tree Preservation Order. As such, the proposal would not accord with Policies D1 and D3 of the East Devon Local Plan 2013-2031 (the 'LP'), which state that proposals will only be permitted where they do not adversely affect trees worthy of protection; and that development should deliver a harmonious and sustainable relationship between structures and trees.
18. Given the above, the proposal would also be inconsistent with paragraph 127(c) of the National Planning Policy Framework (the 'Framework'), which requires development to be sympathetic to the local character, including the landscape setting.

Parking

19. Policy TC9 of the LP deals with vehicle and cycle parking and states that two car parking spaces per home with two or more bedrooms should be provided as part of new developments within the District.
20. The site plan shows that two on-site parking spaces would be provided for the occupiers of the proposed development, which would be located within the existing parking and turning area for Pembroke House.

¹ Appeal Ref: APP/U1105/W/17/3187243

² TPO No: 18/0114/TPO confirmed by East Dorset District Council on 1 November 2018

21. The Council explain that the proposed parking spaces would measure 2 metres (wide) by 4 metres (depth). These measurements have not been disputed by the appellant.
22. Whilst I have not been referred to any local standards relating to the size of car parking spaces within the District, I note that the size of parking spaces would be significantly smaller than the national guidance for the dimensions of car parking spaces as set out within the Manual for Streets (2007).
23. Given the small size of the proposed parking spaces, I am not persuaded that the development would provide sufficient space for two vehicles to manoeuvre and park safely on the site. Consequently, it is reasonably likely that vehicles associated with the proposed development and the occupiers of Pembroke House would either become blocked-in, or there would be displacement of parking on to nearby streets.
24. On my site visit, I noted that the section of Beer Road which serves the appeal site is near to the brow of hill and features several sharp bends. In such locations, on-street parking is not permitted. Alternative parking spaces would therefore be some distance from the appeal site which would be inconvenient for future residents. However, I am not persuaded that this would give rise to any specific highway safety problems. Nevertheless, the development would not function effectively due to the under provision of on-site parking.
25. For the reasons given, I conclude that the development would not function effectively due to an under provision of on-site parking. As such, the proposed development would not accord with Policy TC9 of the LP.

Accessible and Adaptable Dwellings

26. Strategy 36 of the LP explains that for residential developments of 10 dwellings or more developers should demonstrate that all of the affordable housing and around 20% of market units will meet part M4(2) of the Building Regulations, Category 2: accessible and adaptable dwellings (or any comparable updated nationally set standards) unless viability evidence indicates it is not possible.
27. However, the second part of Strategy 36 goes on to state where there are elderly population levels in a settlement that substantially exceed East Devon average levels, for any housing planning application in that settlement the council will seek to negotiate a greater proportion and/or a lower threshold for accessible and adaptable dwellings (or any comparable updated nationally set standards) unless viability evidence indicates it is not possible. The expectation is that the majority of units would be of two bedrooms or more.
28. The Council explain that the average age of the population in East Devon is 46.9 years. However, in the settlement of Seaton the average age of the population is 54. These figures have not been disputed by the appellant.
29. Given that the average age of the population in Seaton substantially exceeds the average age for the District, for any housing application in Seaton, the Council contend that the development should provide a greater proportion and/or a lower threshold for accessible and adaptable dwellings, when compared to the threshold set out in the first part of Strategy 36, which relates to residential developments of 10 or more dwellings.

30. The proposed development would deliver one dwelling, therefore to meet the expectations of Strategy 36 of the LP, whereby a 'greater proportion' of dwellings should meet part M4(2) of the Building Regulations, Category 2: accessible and adaptable dwellings (or any comparable updated nationally set standards), the proposed dwelling would need to meet part M4(2) of the Building Regulations, unless viability evidence indicates it is not possible.
31. In this instance, the proposed dwelling would be situated approximately 50 metres away from the on-site parking area and future occupiers would only be able to access the property by a pedestrian footpath. The site levels slope downwards towards the appeal site and the site plan shows that several sets of steps would be constructed along the footpath to mitigate the level changes.
32. Given the length and sloping nature of the footpath, which would include several sets of steps, it is unclear how the proposed dwelling would comply with the requirements of Strategy 36 to build dwellings to the accessible and adaptable dwelling standards, as set out in Part M4(2) of the Building Regulations. Indeed, no substantive evidence has been submitted by the appellant to demonstrate that these standards would be met. Moreover, no viability evidence has been submitted to indicate it is not possible.
33. The appellant argues that details for a ramp or driveway could be secured by planning condition. However, given the significant length of any ramp/driveway that would be required and the extent to which it may impact upon the character and appearance of the area and/or existing trees at the site, it would not be reasonable to impose a planning condition relating to the submission of the such details for later approval. Moreover, it is unclear whether the construction of a ramp/driveway would meet the accessible and adaptable dwelling standards, as set out in Part M4(2) of the Building Regulations.
34. The appellant has drawn my attention to a recent development known as 'Short Furlong', which has a communal parking area with a stepped pedestrian access leading up to the dwellings. However, only a limited amount of information about the development has been submitted and it is unclear whether the development was approved before the adoption of the LP when different development plan policies may have applied. Therefore, I am unable to assess its relevance in respect of the current appeal.
35. The appellant has also referred me to a recent decision by the Council's Planning Committee to grant planning permission for a residential development of six dwellings at Beer Social Club. The site has varying levels and a communal parking area, which would be located approximately 50 metres away from some of the dwellings. In determining the application, the Council concluded that whilst the accessibility arrangements 'were not ideal', this matter was outweighed by the overall benefits of the proposed development, which included the delivery of affordable housing. This is not the case in respect of the appeal proposal.
36. For the collective reasons outlined above, I am unable to conclude that the proposed development accords with Strategy 36 of the LP. Therefore, the proposal would not adhere to the Council's strategy to provide accessible and adaptable dwellings. For this reason, the proposal would not accord with Criteria 4.a of Policy D1 of the LP which states that proposals should incorporate secure and attractive layouts with safe and convenient access for the whole community, including disabled users.

37. Accordingly, the proposal would be inconsistent with the aims of paragraph 127(f) of the Framework, which explains that planning policies and decisions should ensure that developments create places that are safe, inclusive and accessible. It would also conflict with the National Design Guide which states that good design should promote social inclusion by contributing to creating balanced and mixed neighbourhoods that are suitable and accessible for all.
38. Notwithstanding the above, I am cognisant that the policy wording of the second part of Strategy 36 implies that the delivery of accessible and adaptable dwellings is not a mandatory requirement of the development plan in relation to the appeal proposal.
39. The wording explains for that in locations where there are elderly population levels in a settlement that substantially exceed East Devon average levels the Council 'will seek to negotiate' compliance with accessible and adaptable dwellings standards for a greater proportion and/or a lower threshold of the proposed dwellings, unless viability evidence indicates it is not possible. The term 'seek to negotiate' implies that it is not a mandatory requirement of Strategy 36 for developments located in such locations, rather it is an objective of the LP, which the Council aim to achieve through negotiation with applicants.
40. Consequently, I afford the conflict with Strategy 36 of the LP limited weight in the overall planning balance. Nevertheless, given my findings on the other main issues and the conflict I have found with other development plan policies, this is not a matter on which the appeal turns.
41. The Council have raised concerns about the accessibility of the proposed dwelling for emergency services. The appellant contends that this matter could be dealt with at Building Regulations stage. Even if I were to accept the appellant's position, given my findings on this main issue, this is not a determinative point in this appeal.

Other Matters

42. The appeal site is located approximately 130 metres away from a Special Protection Area (the 'SPA'). The Council explain that the SPA is largely comprised of inaccessible cliffs and slopes, and, thus the proposal would not have a likely significant effect upon the integrity of the protected sites. Notwithstanding the Council's conclusion, as I have concluded that the proposed development would conflict with other development plan policies, and given my findings on the main issues, this is not a matter I need to address.
43. There would be some limited benefits to the construction industry and to the vitality and viability of local services from the spend of future occupiers arising from the proposed development. However, such benefits would be modest and would not overcome or outweigh my conclusions on the main issues.

Conclusion

44. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Christopher Miell
INSPECTOR