



Appeal Decision

Site visit made on 15 December 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2021

Appeal Ref: APP/D1265/W/20/3258829

Foxley Dene, Old Lyme Road, Charmouth DT6 6BW

- 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 & Mrs Ron and Gaby Fletcher against the decision of Dorset Council.
 - The application Ref WD/D/20/000737, dated 19 March 2020, was refused by notice dated 16 July 2020.
 - The development proposed is a new dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on:
 - the character and appearance of the area, including its effect on trees, having regard to the location within the Dorset Area of Outstanding Natural Beauty (AONB) and Heritage Coast, and
 - the living conditions of the occupiers of Kelston, having regard to any overlooking and/or overbearing impact.

Reasons

Character and appearance

3. The wider area forms part of a sloping hillside, facing out towards the sea, within a well-established residential part of Charmouth. It is mainly characterised by detached houses and bungalows, in individually landscaped plots often with hedged boundaries and mature garden planting. Importantly amongst the residential development are small groups of reasonably sizeable trees which visually break up the appearance of the built form on the hillside and provide an attractive and verdant setting to the area.
4. The area falls within the Defined Development Boundary of Charmouth and also is designated within the AONB and Heritage Coast.
5. The appeal site lies within the garden area of Foxley Dene and adjoining Kelston. Part of the site is steeply sloping and within this section of the land there is a small copse of trees, mainly pine but also including oak trees. The elevated position of this group of trees and their reasonably mature appearance make them a fairly prominent feature to the surroundings. The

- trees, which the Council has explained are subject to a Tree Preservation Order, make a positive contribution to the area, including this section of the AONB, softening the appearance of the surrounding buildings.
6. I have carefully considered all the various tree reports and assessments. In particular, I have noted the Hellis Solutions Limited Tree Report (March 2020) and accept that this is a detailed assessment of the situation. The Report sets out an approach to limit any disturbance to the trees and the details of the dwelling and supporting information show that it has been designed to minimise its impact on the trees, including with the use of piles¹ to minimise any root disturbance.
 7. However, the dwelling would be almost wholly constructed within the overlapping Root Protection Areas (RPA) of a number of trees. Indeed the dwelling would be close to the stem of some trees and in the case of T7 and T8 the building would almost wrap around the trees. As these trees form a group which are visually important, I am not satisfied that the case has been clearly demonstrated why there is an overriding justification for the dwelling to be constructed within the RPAs.
 8. Even if the case was demonstrated, then the effect of the works, even with the dwelling suspended off the ground and constructed on piles, causes a concern. About 25 piles are proposed to support the building and these, even if their position is optimised by on site investigations, would mainly be within the RPAs and have the potential to cause some harm to the roots of the trees. The need to provide some services, even if they are close by, would appear to require some ground disturbance² and this element of the proposal is not so comprehensively detailed so as to provide me with the necessary reassurance that some harm to the trees would not result.
 9. Also the construction of the dwelling on a steep slope, where the building would be positioned close to the stem of a number of trees and under their canopies, would appear to present substantial construction challenges. The Tree Report sets out a number of best practice approaches, however, they are not so site specific and detailed to robustly demonstrate that construction and the associated activities could take place without some detriment to the trees which would closely surround the proposed building.
 10. I have noted the advice of the Council's Trees Team Leader when he comments that the footprint of the building would reduce the options for replanting, and this would have the effect of thinning the stand of trees. This advice further comments that the trees have grown as a group and derive mutual benefit from the shelter they afford each other and there is some concerns that opening up the stand would also increase the risk of wind-damage unacceptably. The proposal involves the loss of a small number of some of the poorer quality trees. I give weight to the views of the Council's Trees Team Leader and I agree that the loss of some trees could lead to an effect on the mutual support that the group provide and this raises a further concern in respect of the potential, in the longer term, to retain the integrity of the group as a whole.

¹ I have had regard to the Treesafe foundation solution information.

² I have noted the foul water above ground proposal and the further comments in the appellant's final comments which respect to where services are located.

11. Also, even if the scheme was to be constructed such that the trees were retained, the group of trees would be close to the dwelling with the canopy of some directly over the structure. I have concerns that the proximity of the trees to the habitable accommodation would lead to apprehension for some occupiers once they took up occupancy and experienced the trees, particularly in any high winds, and this could lead to requests for removal of some trees. These trees would be closer to the proposed dwelling than to neighbouring properties. I consider that the position of the trees in such association with the dwelling may make it difficult in the future for the Council to resist requests for their removal, even with them being protected. Given the mutual benefit that the trees may afford each other this could put other trees at risk leading them to become less stable and potentially the need to be felled.
12. Drawing all these matters together, firstly, I am not satisfied that the case has been clearly justified for the dwelling to be positioned within the RPAs of the trees. Secondly, even if that was to be the case, the combination of the concerns that I have examined above lead me to conclude that the cumulative effects of incursions into the RPAs and the works around the trees would, in all likelihood, cause undue harm to some individual trees which would affect their long term health. Furthermore, the occupation of the dwelling, if constructed, could likely lead to requests for removal of some trees which could be difficult to resist in the future. As a consequence of all these matters, the construction of the dwelling in this location would, in my view, lead to the deterioration and/or removal of some of the trees and ultimately erode the positive contribution the trees make as a group to the character and appearance of the area. Planning conditions attached to any approval could not address this matter.
13. The design and scale of the dwelling in itself would sit satisfactorily on this slope with adequate spacing to the adjoining properties, in terms of its appearance within the road. The contemporary appearance would not be out of keeping with the mix of dwelling types and styles in the area. However, the provision of an acceptably designed dwelling would not outweigh the harm which would likely result to the trees on the site and the overall effect of the proposal, because of the impact on the trees, would be to detract from the character and appearance of the area.
14. The site lies within the AONB. Within such a designated area, the National Planning Policy Framework (the Framework) requires that great weight should be given to conserving and enhancing landscape and scenic beauty as AONBs have the highest status of protection in relation to these issues. While the harm I have identified would be localised, the proposal would not, nevertheless, conserve or enhance the landscape and scenic beauty of this section of the AONB and this harm, in accordance with the Framework, affords great weight.
15. It also follows that as the scheme would be harmful to the character and appearance of the area it would not meet with the approach set out in Policy ENV1 of the West Dorset, Weymouth and Portland Local Plan 2011-2031 (adopted 2015) to protect the Heritage Coast.
16. In the light of the above analysis, I conclude that the proposal, because of the likely adverse impact on the trees on the site, would harm the character and appearance of the area, including the AONB and Heritage Coast. As a consequence, the development would not comply with Policies ENV1, ENV10

and ENV12 of the Local Plan and the Framework which seek, amongst other things, that the position of a building on the site should relate positively to features that contribute to the character of the area.

Living conditions

17. The proposed dwelling would be positioned up the slope compared with the adjoining dwelling, Kelston. The building would have windows and a balcony that would largely provide views into the distance beyond Kelston. However, the side of the balcony, the living room corner window and the master bedroom window would face at various angles towards the neighbouring property.
18. There is a range of fairly well established planting along the boundary between the plots both at reasonably low and medium height, and a laurel hedge has been planted. This helps reduce the intervisibility between the two sites and would more so in time as the hedge grows. There would not be direct and adverse overlooking into any habitable room of Kelston from the proposed dwelling because of the position of windows and doors in the elevations of Kelston. However, even with the planting along the boundary, I consider that there would still be glimpsed views of some of the rear garden areas of Kelston from parts of the balcony, the corner window of the living room and from the master bedroom window.
19. The plans show that a section of the side balcony would have a screen and in any permission a condition could be attached so that it extended along the whole of the side of the balcony which would face Kelston and this would address this concern of overlooking parts of the rear garden. The master bedroom is set back towards the rear of the site, adjoining the top of the garden, and this would help minimise the perception of being overlooked from this window for the occupiers of Kelston. However, the window to the living room would be elevated, reasonably close to the boundary and I consider that this would be perceived, even with the boundary screening, by residents of Kelston as an intrusion when they were within parts of their garden. I do not consider that the overlooking concerns from this window could be addressed by a planning condition, such as obscure glazing this window, as it would be the main window to this section of the building. Consequently such a condition would not meet the test of reasonableness.
20. The presence of the proposed dwelling would not be overbearing to the occupiers of the neighbouring property because of its overall scale, position and form. I accept that the surrounding dwellings are positioned so that there is some degree of mutual intervisibility between properties. However, for the reasons explained, the position and impact of the corner living room window would not meet with the Framework requirement to create places that provide a high standard of amenity for existing and future users.
21. Accordingly, for the limited reason set out above, I consider that the development would cause some undue overlooking, and the perception of being overlooked, such that the scheme would harm the living conditions of the occupiers of Kelston. Consequently, the scheme would not meet with the requirements of Policy ENV16 of the Local Plan and the Framework which seek, in this respect, that development should be designed to minimise their impact on the amenity and quiet enjoyment of both existing and future residents.

Other Matters

22. The proposal would provide a boost to housing supply on a windfall site, making effective use of the land, and in an area where the Council is unable to demonstrate a Framework compliant supply of housing land. The site is advanced as a self-build site in accordance with the relevant legislative provisions and therefore would add to the delivery of this type of housing. There would be economic and social benefits to the area during construction and in subsequent occupation. The site would be located in an accessible location with fairly good access to local services and facilities. There could be ecological benefits resulting from the development in accordance with the ecological recommendations. Furthermore, the site lies within an existing garden area, within the Defined Development Boundary and the principle of the development is not at issue. However, as only a single dwelling is proposed, this would have a limited effect on the overall delivery of housing and I attribute the cumulative benefits of the proposal limited weight.
23. I have taken into account the letters of objection, the comments of the Parish Council and the representations in support of the proposal and have assessed the key issues which have been raised above.

Planning Balance and Conclusion

24. The Council is unable to demonstrate a 5 year supply of deliverable housing sites. However, the presumption in favour of sustainable development as set out in paragraph 11d of the Framework is not engaged because, as the scheme would harm the AONB, the application of policies in the Framework that protect areas of particular importance provides a clear reason for refusing the development proposed.
25. I have found that the benefits of the scheme merit limited weight. The harm to the character and appearance of the area, including to the AONB and the Heritage Coast, and the harm to the living conditions of the occupiers of Kelston, cumulatively merit substantial weight. It follows that the benefits of the scheme would not outweigh the identified harm.
26. Even if the presumption in favour of sustainable development was engaged the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
27. For the reasons given above, the scheme would not comply with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict. I therefore conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR